



Senate

General Assembly

File No. 255

January Session, 2003

Substitute Senate Bill No. 1091

Senate, April 9, 2003

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE UNLAWFUL DELIVERY OF CIGARETTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2003*) (a) No person engaged in the
- 2 business of selling cigarettes shall ship or transport or cause to be
- 3 shipped or transported any cigarettes to any person in this state except
- 4 to: (1) A cigarette distributor or dealer; (2) an export warehouse
- 5 proprietor pursuant to Chapter 52 of the Internal Revenue Code of
- 6 1986, or any subsequent corresponding internal revenue code of the
- 7 United States, as from time to time amended, or an operator of a
- 8 customs bonded warehouse pursuant to 19 USC 1311 or 1555; or (3) a
- 9 person who is an officer, employee or agent of the United States
- 10 Government, this state or a department, agency, instrumentality or
- 11 political subdivision of the United States or of this state, when such
- 12 person is acting in accordance with such person's official duties.
- 13 Notwithstanding the provisions of section 12-15 of the general statutes,
- 14 the Commissioner of Revenue Services shall publish on the Internet

15 website of the Department of Revenue Services a list of every cigarette
16 distributor or dealer. As used in this subsection, "cigarette distributor
17 or dealer" means a person licensed as a cigarette distributor under
18 section 12-288 of the general statutes or licensed as a dealer under
19 section 12-287 of the general statutes or a person whose name appears
20 on a list of licensed distributors and dealers published by the
21 Commissioner of Revenue Services.

22 (b) No common or contract carrier shall knowingly transport
23 cigarettes to a residential dwelling or to any person in this state who
24 the common or contract carrier reasonably believes is not a person
25 described in subdivisions (1) to (3), inclusive, of subsection (a) of this
26 section. No person other than a common or contract carrier shall
27 knowingly transport cigarettes to any person in this state who is not a
28 person described in subdivisions (1) to (3), inclusive, of subsection (a)
29 of this section.

30 (c) When a person engaged in the business of selling cigarettes ships
31 or transports or causes to be shipped or transported any cigarettes to
32 any person in this state, other than in the cigarette manufacturer's
33 original container or wrapping, the container or wrapping shall be
34 plainly and visibly marked with the word "cigarettes".

35 (d) Whenever any cigarettes have been or are being shipped or
36 transported in violation of this section, such cigarettes are declared to
37 be contraband goods and the confiscation, search and forfeiture
38 provisions of section 12-305 of the general statutes shall apply.

39 (e) Any person who violates the provisions of this section shall be
40 guilty of a class A misdemeanor and, for a second or subsequent
41 violation, shall be guilty of a class D felony.

42 (f) The Commissioner of Revenue Services may impose a civil
43 penalty of not more than five thousand dollars for each violation of
44 this section. For purposes of this subsection, each shipment or
45 transport of cigarettes shall constitute a separate violation. The
46 Attorney General, upon request of the commissioner, may bring an

47 action in the superior court for the judicial district of Hartford to
48 collect such fine and for any injunctive or equitable relief.

This act shall take effect as follows:	
Section 1	<i>July 1, 2003</i>

Statement of Legislative Commissioners:

The definition of "cigarette distributor or dealer" in subsection (a) was moved for clarity and "must" in subsection (c) was changed to "shall" for consistency.

GL *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Revenue Serv., Dept.	GF - Revenue Gain	Potential	Potential
Attorney General	GF - Revenue Gain	Potential	Potential
Criminal Justice, Div.	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

To the degree that the bill prevents remote sellers (orders placed through the internet, phone, and by mail) from selling cigarettes to Connecticut residents, which in turn results in more cigarettes purchased through in-state dealers, there would be an increase in revenue from taxes imposed on the sale of cigarettes (the cigarette excise tax and the sale tax). For every 10% increase in purchases made through in-state dealers rather than through remote sellers would result in an estimated \$600,000/yr in tax revenue.

The bill is not anticipated to result in any additional costs to the Department of Revenue Services (DRS) since it is intended to enhance the current laws administered by the agency regarding the distribution, sale, and taxation of cigarettes.

The Commissioner of DRS may refer anyone who violates the bill to the Attorney General, who may then bring an action in superior court to collect civil penalties imposed by the DRS. It is anticipated that few such referrals would be made and, consequently, the Attorney General would be able to handle cases under the bill without needing additional resources. Likewise, State Prosecutors (Division of Criminal Justice) could handle criminal cases under the bill without the need for

additional resources. It is anticipated that no one would be incarcerated under the bill. A minimal amount of revenue (less than \$50,000/yr) could be generated from criminal fines.

OLR Bill Analysis

SB 1091

AN ACT CONCERNING THE UNLAWFUL DELIVERY OF CIGARETTES**SUMMARY:**

This bill prohibits companies that sell cigarettes from shipping, transporting, or causing them to be shipped or transported directly to Connecticut consumers. The transactions prohibited under the bill include Internet, telephone, or mail-order purchases that are sent directly to customers. The bill specifies that cigarette shipments must go only to (1) a state-licensed cigarette distributor or dealer or people named on a published Department of Revenue Services (DRS) list of licensed distributors and dealers; (2) an export warehouse proprietor or customs bonded warehouse operator; or (3) a local, state, or federal government employee or agent acting in accordance with his official duties.

The bill prohibits common or contract carriers from knowingly transporting cigarettes to a residence or to anyone in Connecticut who the carrier reasonably believes is not one of the entities described above. It also prohibits people other than common or contract carriers from knowingly transporting cigarettes to any person who does not fit within one of those categories. It requires sellers to plainly and visibly mark packages with the word "cigarettes" when they do not ship or transport them in the cigarette manufacturer's original container or wrapping.

The bill requires DRS to publish on its website a list of every cigarette distributor or dealer. It also sets civil and criminal penalties for violations.

EFFECTIVE DATE: July 1, 2003

CRIMINAL PENALTIES

Under the bill, first offenses are class A misdemeanors, punishable by imprisonment for up to one year, a fine of up to \$2,000, or both. Subsequent offenses are class D felonies, punishable by imprisonment

for one to five years, a fine of up to \$5,000, or both.

CIVIL PENALTIES

The DRS commissioner may also impose a civil penalty of up to \$5,000 for each shipment or delivery. The bill authorizes the attorney general, at the commissioner's request, to file a lawsuit to collect the fine. He can also ask the court to order injunctive or equitable relief.

FORFEITURE

The bill makes any cigarettes that have been or are being shipped or transported in violation of the bill's provisions contraband. It makes existing confiscation, search, and forfeiture law procedures for unstamped cigarette sale and transport violations apply in these circumstances.

BACKGROUND

Common and Contract Carriers

In this context, a "common carrier" is a motor vehicle its owner uses primarily to transport the goods of the general public from place to place for a fee. A "contract carrier" is a motor vehicle its owner uses to transport the goods of specific people under contractual arrangements with those people.

Related Federal Case

On February 13, 2003, the U.S. Court of Appeals for the Second Circuit ruled that a similar law prohibiting cigarette sellers and common and contract carriers from shipping cigarettes directly to New York consumers did not unconstitutionally discriminate against interstate commerce (*Brown & Williamson v. Pataki*, 320 F.3d 2000). Second Circuit rulings are generally binding on Connecticut courts, unless overruled by the U.S. Supreme Court.

COMMITTEE ACTION

General Law Committee

Joint Favorable Report
Yea 17 Nay 0

